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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,412	08/24/2001	Jerry L. Aikins	ZIM0090	4304
43963	7590	01/25/2005	EXAMINER	
ZIMMER TECHNOLOGY - BAKER & DANIELS 111 EAST WAYNE STREET, SUITE 800 FORT WAYNE, IN 46802			PRIDDY, MICHAEL B	
			ART UNIT	PAPER NUMBER
			3732	

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/939,412	AIKINS ET AL. <i>WD</i>
	Examiner	Art Unit
	Michael B Priddy	3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 November 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-7, 13-29, 41 and 42 is/are pending in the application.
 - 4a) Of the above claim(s) 17-29 is/are withdrawn from consideration.
- 5) Claim(s) 1-7, 41 and 42 is/are allowed.
- 6) Claim(s) 13 and 15 is/are rejected.
- 7) Claim(s) 14 and 16 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 13 and 15 are rejected under 35 U.S.C. 102(a) as being anticipated by Applicant's admission of prior art. Figs. 1 and 2, labeled as prior art by Applicant, teach a bone plate assembly, comprising: a bone plate having elongate plate 48 and blade 50 portions connected to one another at a bend 52 and disposed at an angle with respect to one another, said plate portion 48 having a fist hole therein and a second hole therein which is disposed intermediate said first hole and said bend; a strut screw 60 disposed through said first hole and extending toward said blade portion 50; a top screw 46a disposed through said second hole, said top screw 46a extending angularly to one side of said strut screw; a third hole disposed intermediate said first and second hole.

Allowable Subject Matter

Claims 14 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1-7, 41 and 42 are allowed.

Response to Arguments

Applicants' arguments filed 11/15/2004 have been fully considered but they are not persuasive. The Applicants have argued "Figs. 1 and 2 fail to disclose a top screw extending angularly to one side of the strut screw as called for in independent claim 13." The examiner has maintained the rejection and clarifies as follows. The top screw 46a as depicted in Fig. 1, extends at an angle (relative to strut screw 60) to the inferior side (according to the drawing) of strut screw 60. While it is true that one cannot be sure of the cutting plane used to take the section shown in Fig. 1, screws 46a and 60 intersect each other at what appears to be an angle of about 35°. The Examiner believes this is all that is required by the language "said top screw extending angularly to one side of said strut screw.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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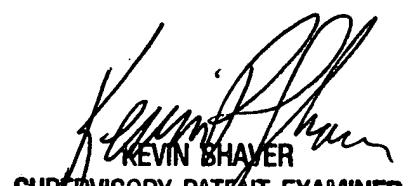
the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael B. Priddy whose telephone number is (571) 272-4717. The examiner can normally be reached on Mon.-Fri. 8 a.m. - 5 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael B. Priddy
Michael B. Priddy
January 10, 2005


KEVIN SHAVER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700